

A P P E A R A N C E S

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I N D E X

Witness: Examination: Question No.:

Martin Brennan Mr. Healy 1 - 298

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,

25TH JUNE, 2003 AT 11AM:

MR. HEALY: Mr. Brennan, please.

MR. BRENNAN, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

CHAIRMAN: Good morning, Mr. Brennan. Thank you for coming back to assist further. Of course you are already sworn.

MR. HEALY: Thank you for agreeing to make yourself available, Mr. Brennan.

When you last gave evidence, you remember that over a very extended period of time, there were a number of matters that we couldn't conclude because we needed information, or at least we needed to hear from other witnesses about what information was available in order to enable to you deal with certain matters; and in addition, since that time, certainly the Tribunal has learned a lot more about the process, and there were a number of aspects of the process that we either couldn't touch on or didn't touch on in any significant detail in the course of your evidence.

And it's hopefully to try to conclude matters in relation to the process that you are now that you have now agreed to make yourself available, indeed as we predicted would be necessary at the outset of your evidence.

One of the things I want to look at, one of the first

things I want to look at is the question of the evolution of the weightings, and what I want to start with is the evaluation models, and I was hoping to go through those to try to see what light you could throw on them or what help you could be in enlightening the Tribunal as to how the weighting as reflected in the ultimately adopted evaluation model evolved.

Now, I need to refer to you a few books, but the first book I want to refer you to is what has sometimes been called the weightings book it's Book 54.

A. I have that one, yeah.

Q. And I'd also like to refer you to one section of Book 41, Leaf 49. I am not going to ask you to pull that out because you'll be juggling too many books. I'll try to get that particular portion, if I can.

In the early stages of the development of the process, we now know that you devoted a lot of time to evolving, firstly, a list of criteria; isn't that right?

A. Yeah.

Q. Having evolved a list of criteria, you developed a descending order of priority of those criteria?

A. That's right, on advice from KPMG.

Q. Yes. But there was quite a comprehensive amount of discussion, both amongst yourselves and between yourselves and Mr. Pye and so on, or the late Mr. Pye?

A. Yeah.

Q. And then you applied a set of weightings to these evaluation criteria; that was a much later development, but you applied a set of weightings to them, and the idea was that those weightings would reflect the relative importance of each of the criteria. Isn't that correct?

A. Yeah.

Q. And we saw how, if I could just digress for a moment, how, after the EU intervention, it was necessary to rebalance the weighting criteria so as to reflect the diminished importance of the licence payment?

A. That's correct.

Q. So not only did you have a descending order of priority, you had a concrete relativity between each of the criteria as reflected in the weighting applied to each of them, or to all of them; isn't that right?

A. Yeah.

Q. In the course of identifying a consultant to become involved in the evaluation process, you received a number of tenders and ultimately accepted Andersens' tender?

A. That's correct.

Q. And Andersens' tender document contained an account of how they proposed to carry out the evaluation?

A. Yeah.

Q. Now, their tender document is contained in Book as I said, Book 41, Leaf 49, but I'll give it to you in a

separate book so that it will be handier for you to refer to it. I am not going to dwell too much on it.

(Document handed to witness.)

It's the first document in the book I have just handed to you. If you go to Part 3, which starts on page 6, you see the heading on that section is "Suggested Solutions to Some of the Anticipated Problems and Challenges".

And if you go on to the next page, page 7, the second paragraph, Andersens set out how they propose to, I think, frame the work. They say "In addition we propose that the consultants initially participate in elaborating a document with an outline of the logical links between key legislative and regulatory options as expressed in the RFP document on the one hand and different kinds of evaluation criteria and techniques on the other."

It goes on: "This translates into the final specification of the evaluation criteria which could be grouped around the four categories outlined as follows:"

Now, they then define those four categories as marketing dimensions, technical dimensions, management dimensions and financial dimensions. So that we don't get bogged down in nomenclature, we now know that what he is talking about here are the four classes or categories of dimensions that he ultimately grouped

under the heading "Aspects"; do you remember that?

A. Mm-hmm.

Q. So it's really, I suppose, marketing aspects, technical aspects, management aspects, financial aspects. I am not going to go into them in detail, but these four categories, effectively, pull together the RFP paragraph 19 criteria and try to group them under, I think, what he in another place calls a manageable a number of manageable classes of criteria?

A. I would say, looking at it from what we now know that what he was trying to do was to create a link between his kind of proprietary standard approach to competitions and paragraph 19. That's what it looks like to me, because his own model of marketing dimensions, technical dimensions, management dimensions and financial dimensions is clearly, now, looking back at it, his way of doing business. He had the problem of trying to associate that with ours. And then he uses, if you like, all the words in paragraph 19 as he defines his own model of dimensions. And one of the reasons I am mentioning that now is and this will come up later in evidence his view of performance guarantees as elaborated here is not a correct view of performance guarantees in terms of the competition documentation. Now, the reason I say that, you may be interested in

looking at it is: In the exercise of questions posed by applicants and responses given by the Department in consultation with the consultants after they had come on board, we defined performance guarantees as things to be put on the table by applicants which would raise the comfort of the licensor that they would deliver the project, whereas here, and for some of the evaluation, the Andersen view of performance guarantees was around blocking and drop-out rates, which we regarded as a technical issue.

The reason I am saying that, because when we come to look at the quantitative table versus the qualitative table, it becomes relevant.

Q. I understand that. And I think that problem arose at a very early stage because in some of the participants, or some of the applicants, those who participated in the question-and-answer process do you remember that? one of them, at least, I can't remember which one, asked a question about whether performance guarantees would involve a performance bond. Do you remember that question being asked?

A. Yeah.

Q. And I think a query was raised on the Department side and/or on Andersens' side as to what answer should be given to that, but I don't think the matter was clarified at that point; isn't that right?

A. I think you'll find that there is a clear statement in

the memorandum for the information of applicants in response to queries, a clear statement of what we meant by performance guarantees. And you will find that it is not remotely connected with blocking and dropout, exactly.

Q. I understand that. But it didn't say that what we envisage by performance guarantees is what you are prepared to stake on your ability to get your network up and running. Am I right in that?

A. I think it was to do it it was a bit in that area, and the easiest way of clarifying is to get out the document. But it was in terms of milestones, measurable milestones against which the project will be delivered and any consequences of failure. It was in that sort of ballpark.

Q. All right. Well, we'll pull it out.

If you go to the bottom of that page, Mr. Andersen says "Obviously most attention should be given to the evaluation criteria outlined in paragraph 19 of the RFP document underscored above."

It goes on: "These specific evaluation criteria, which we assist in detailing in a separate report, can be further developed as shown in Table Number 1."

And then I think you have an example here of what he ultimately did in linking the RFP to what he regarded as the manageable categories into which the various criteria could be grouped.



And he has, on the left-hand side of that table, the left-hand column, he has the evaluation criterion, and on the right-hand side, he has operationalisation, an example. So the aspect that he wants to look at is marketing. He then says that the dimension of marketing he wants to look at is coverage. He then suggests an indicator for measuring coverage; isn't that right?

A. Mm-hmm.

Q. Then he suggests a number of sub-indicators which he would further use to elaborate that particular criterion; isn't that right?

A. Yeah.

Q. Now, the impression you have, which I think was an impression I certainly had from the beginning, that Mr. Andersen more or less reversed his model into the Government's paragraph 19. Is that something that you have only divined in the course of these proceedings, or something that you divined in the course of going through the process?

A. I think we were conscious of it is in some respects during the process, but it has only become clear in these proceedings.

Q. All right.

I think the next few paragraphs are worth reading as well, or worth drawing to your attention. He says:

"As evident from Table 1, each evaluation criterion

can be detailed in a rather precise manner. However, there will of course always be a need for a general or a holistic approach in order to be able to assess the overall performance ability and consistency of the entire business cases presented by the applicants.

Clearly, this is also reflected in paragraph 19 of the RFP document, in which the credibility of the business plan is a top-priority criterion.

"Having specified the above-mentioned evaluation criteria, it will be possible to develop preferably two evaluation approaches:

" one way to go is to compose (one or more) models based on a system of points, whereby the values of the different applications can be scored, e.g. according to a scale of arabic numbers connected to each specified performance criteria. (Application A1 has 3.5 points more than application A2 but 5 points less than Application A3, etc.).

" another way to go is to award qualitative marks (e.g. A, B, C, D) to the applicants' performance areas which will finally allow for a simple ranking of the applications (Application A1 is better than Application A2").

He goes on: "In both models it is difficult to make the addition of the measured performance since the added results are highly dependent on the weighting of the different evaluation criteria (which do not by

nature belong to an interval scale). The addition of the results at the "bottom line" will inevitably contain some arbitrariness, except for the proposed licence fee payments, which is normally easy to assess in an objective and transparent manner. It should therefore be considered to use both methods in order to maximise the validity and reliability of the calculated results. Attention should also be paid to the calculation process. One extreme is to let different participants in the Evaluation Team calculate their own results (the "independence" model). Another extreme is to gather the participants to common sessions in order to discuss and agree on the calculation (a "Delphi" model).

"Independent of which evaluation model the Department finally chooses, we recommend that supplementary analyses be carried out where no immediate discrimination among the applications can be made."

Do I understand correctly from the evaluation report that ultimately, you went with what he called the Delphi model, the consensus approach well, when I say that, I am not asking you to be specific, because I think these hard-and-fast distinctions that he makes here were not carried through into the process.

A. No, I mean

Q. Does he not describe it at some point as being the Delphi

A. I am not sure whether he does or not, but just to be clear, this is the document he used to win the right to run the competition for us. And I am not sure that anybody kept referring back to it as the thing progressed, you know, is it exactly as described.

Now, having said that, and that's by means of general comment, I think it's clear from all the evidence that you have, for example, John McQuaid and Aidan Ryan, together with technical people from Andersens, did the technical evaluation, reported back to the group, had it discussed within the Group A devil's-advocate approach within the group. Similarly with financial, and so on. So, that to me is more of the sort of independence model than the Delphi model, but there is an element of blending there as well.

Q. I think there probably is, but we'll come to in it more detail later.

If you go to page 14 for a moment, Section 4.3 is headed "Executing Part". And he describes here what he proposes, I think is the fair way to put it, as the method for executing the work or carrying out the evaluations.

He has a number of steps which he has numbered by reference to a whole load of other steps which he identifies as part of the preparatory work. Step 9, which is in fact the first step in the executing part, he describes as, if you look at the second sentence in

Step 9, "The first part of the work is to register the applications and to check whether they conform to the formal requirements such as the sealing of 350 pages excluding appendices."

He goes on to say: "Once this task is performed, the applications are formally admitted. This means that they can be seriously evaluated. We expect all applications to conform to such a degree that they should be admitted."

"Also a preliminary assessment to the fulfillment of formal and non-formal minimum requirements, such as a reasonable degree of geographical coverage, a not-too-protracted roll-out accepted to be conducted."

You remember those steps being taken when the number of pages, whether you were going to give the appropriate percentage of geographical and population coverage and so on. If you weren't going to propose that, there was no point in considering your application.

The next step: "As an entrance to the in-depth evaluation, a lot of critical reading is necessary."

The next step: "Perform the quantitative evaluation, which can partly be obtained by utilising our GSM number-crunching model and partly by the use of a more formal security system."

Then he says: "The next step is to conduct the presentation meetings with each applicant".

The next step, he says: "The most demanding step, however, is the qualitative evaluation. We suggest to proceed in such a way that it comprises a number of different aspects such as marketing, technical, financial, management and legal aspects. For each aspect a number of dimensions, indicators and sub-indicators can be delivered. One of the scoring methods is to award marks during a ballot. If agreement concerning the award of marks cannot be reached or if there are any remaining doubts, we suggest that supplementary analyses be carried out".

Next thing is "During the entire evaluation phase, a number of track recording and verification issues should be given attention. The information provided in the applications is not, per se, fully correct and valid and rather boosting language can be part of the application. The track record of the management team, the proven record of the proposed billing systems and the liquidity and solidity statements are prime examples of potential issues for track recording and verification".

I think we may have discussed this before, at least I may have discussed it with another witness, track recording here and verification means, I think, examining someone's track record and verifying that what they are saying is credible; would that be a fair way?

A. That sounds reasonable, yeah.

Q. He says "Last but not least, a holistic approach is appropriate in which both the quantitative and qualitative evaluation is integrated and overall aspects are taken into account in order to meet the objectives set out by the Minister."

Then he says: "Closing the tender process is the final part.

"Before the tender process is closed, an important step is the preparation of a complete report documenting the results of the evaluations, including the supplementary analyses. In addition to an executive summary, the report will comprise an overview of the conducted evaluation procedures, a description of the basic philosophies behind the business cases of the applications, a detailed survey of the results from the quantitative and qualitative evaluation, a selected number of salient issues from the applications and the results of the supplementary analyses.

"Together with the evaluation report, a final status report will be prepared. In order to service the Minister, this report will also comprise a survey of the evaluations in which a clear matrix, confronting the evaluation criteria with the characteristics of the applications, appears."

I think that probably means relating the evaluation

criteria to the applications and to what's proposed by the applicants.

"Along with the elaboration of the evaluation report, we will assist in drafting of the GSM2 licence.

"Once the Minister has nominated the best application as the winner, everything is prepared to enter the licence negotiations in a professional manner."

Then he goes on to suggest that they participate in sending rejection letters and other pieces of information to non-nominated applicants. And he goes on: "As a final step, we offer to participate in the "evaluation of the evaluation", and on the basis that we can provide a final status report that may also include a number of suggested future guidelines for the courtesy of an efficient and effective regulation of the competition."

A. I think part of the significance of those final steps, 21, 22 and 23, I think when we went to tender, we asked people to tender separately for the evaluation and for the licence negotiation if we required them. So that's why he is laboring it, I think.

Q. I follow. I see.

If you go to the next page, "Specific comments and suggestions concerning the evaluation models.

"The nucleus of the evaluation model is to apply the adopted evaluation models on the admitted applications. In fact, we expect all applications to



be substantially better than the minimum requirements, and it is therefore likely that 4 to 5 applications will be admitted to the in-depth material examination during both the quantitative and the qualitative evaluation. One of the advantages of having both the quantitative and the qualitative evaluation is that they often turn out with the same end result, which will be a strong argument for the validity and reliability of the procedures behind the nomination of the highest-ranked application. In addition, the quantitative evaluation will generate a wealth of useful 'hard data' which can serve as a fact base for the later coming qualitative evaluation."

Then he goes on to describe how you would do the quantitative evaluation, then how you would do the qualitative evaluation, and so on.

A. It's clear that in Table 2 there, for example, he is obviously using weights from some of his own proprietary software, because the issue hadn't been touched on at all with us at that point, on page 18.

Q. Just what point are you making there, Mr. Brennan?

A. The point I am making is he starts talking about weightings here, but it's clearly just part of his proprietary way of doing evaluations. It has nothing got to do with our structure or our paragraph 19.

Q. If you look on the next table, he has a draft of a qualitative evaluation table; do you see that? Very

similar to the sort of final evaluation table in the qualitative evaluation in his first evaluation report.

Do you see that there?

A. Yeah.

Q. Do you notice that he doesn't have any weights there?

As a matter of interest, do you see that?

A. Yeah.

Q. Now, I recognise what you're saying about this being

his proposal, but I am mentioning it for a number of

reasons; firstly, because it clearly gave an

indication of how he proposed to do the work, and

having appointed him, you had an idea of what it was

he was going to do and how he was going to do it and

what philosophy was behind his approach. But I have

an another reason for mentioning it, and I'll just

draw it to your attention in a few minutes.

I now want you to go to the weightings book, Book 54.

What this book contains, in the main, is a copy of Mr.

McMahon's copy, in fact, of the first proposed

evaluation model, a copy of the second proposed and

ultimately adopted evaluation model, and then some

other related information in which some issues

concerning these evaluation models were raised.

If we go to the first document in the book; this is a

version of the evaluation model which was produced at

a meeting of the Project Group on the 18th May of

1995. I think, from what other witnesses have said,

we understand that this document was produced at the meeting and that, in other words, you didn't have an opportunity of examining it beforehand. I don't want to ask you to turn it up because you'll just have too many books in your hands, but at the 7th meeting of the Project Group, on the 18th May, this is Document Number 64, Leaf Number 64 of Book 41. I think it's in your book, in fact, in the book of documents you have there.

But in any case, that meeting, the heading on that meeting is "Presentation of the Evaluation Model by AMI". And "Prior to the presentation of the model, its confidential nature was emphasised, and it was agreed that three copies would be left in Dublin in the hands of Fintan Towey, Sean McMahan and Jimmy McMeel, and lock-and-key security would apply at all times."

Then on the next line if you look on the overhead projector you might find it more easily, second bullet point "AMI distributed copies of the draft model.

After initial study, the group had no major difficulty with the chosen format, and a page-by-page scrutiny ensued. The following points were agreed:"

So it would appear that was the first time anybody got it, though it would have been prefigured, or if you like, its format and the approach reflected in it would have prefigured in the tender documents.

A. Yeah.

Q. The first page, page 1 of 19, contains an introduction in which it says that it's been decided to apply both a quantitative and a qualitative model to the eligible applications. "This document contains information concerning the quantitative and qualitative evaluation models."

Now, for some reason that sentence is in brackets, but in any case, it's also contained in the model that was adopted?

A. Mm-hmm.

Q. And then it goes on to describe what the document will contain. It says it will contain two parts. One part, or the first part, describing the quantitative evaluation, and the second part contains a description of the qualitative evaluation.

And the third paragraph I think is just worth drawing to your attention. It says "As both the quantitative and the qualitative evaluation will be performed, the guiding principle will be to work with a manageable set of aspects which is essentially identical, i.e. marketing aspects, technical aspects, management aspects, and financial aspects. In addition to these aspects, which form a common denominator in both evaluations, the qualitative evaluation also deals with the risks, i.e. the sensitivities of the business case in relation to the evaluation criteria outlined

in paragraph 19 of the RFP document."

Now, I just want to refer you to the next paragraph:

"Each aspect is broken down into dimensions, and each dimension is subsequently broken down into indicators.

The chosen division of the evaluation criteria into aspects, dimensions and indicators is based on the framework described in the proposal from Andersen Management International, and the reader is assumed to be familiar with the content of this proposal."

Now, just in relation to that, do you know if the proposal was a document that had been circulated?

A. I can't say for sure that it was. I know that a smaller number of us were only involved in the selection of the consultants. I don't know what happened after that.

Q. That certainly, from the evidence of everybody else involved in the Project Group, that's clear from the evidence of everybody else involved in the Project Group, that only a number of you were involved in that more limited part of the whole project.

A. Having said that, if those people happened to be in, and I think they may have been, myself and Fintan, Sean McMahon and John McQuaid, then there was a representative of each of the divisions, at least, was familiar with it.

Q. Well, I don't think Mr. McMahon was, or anyone else from his division.

A. Yeah, I don't know.

Q. Or Mr. McQuaid.

A. It would be unusual if we didn't have some involvement, I'd say. I have forgotten who was involved.

Q. Just before you go on, I don't want to catch you out on this; that sentence was in fact deleted from the finally adopted evaluation model, and I am just wondering, does it ring a bell with you, the deletion of it?

A. It doesn't really, no. Except it's kind of, in a way, it's a sentence that once it's read, it's wasted, if you like.

Q. That's true. I mean, there is no suggestion that anybody present was rejecting the notion that they that the model was based on what has been proposed by or the philosophy that had been outlined by Mr. Andersen in his tender document?

A. Well, I certainly have no such recollection.

Q. On the next page then, Section 2 sets out the procedure for the quantitative evaluation process.

And Mr. McMahan has some notes, and I think these notes reflect some changes that were made in the course of discussion of the document as presented by Andersens.

Then on the next page, Section 3 sets out in a table an overview of the selected dimensions, indicators and

the relation to the RFP document.

Now, you'll see there in the left-hand column, you have a list of the RFP criteria; do you see that?

A. Yeah.

Q. In the middle column, you have the dimensions into which each of these criteria has been broken down?

A. Mm-hmm.

Q. And then in the next column, the indicators into which, or the indicators to be used, if you like, for actually measuring the performance or the proposed performance of each of the applicants with respect to these dimensions.

A. Mm-hmm.

Q. Now, I'll just draw your attention once again to the second-last one, since you have mentioned it already yourself: Do you see the performance guarantees proposed by the applicant?

A. Yeah.

Q. Then blocking and drop-out rate mentioned as the indicator; do you see that?

A. Yeah.

Q. I am going maybe I'll just go on for a moment. If you go to the next few pages, you'll see that each one of these indicators and each one of these dimensions is mentioned in detail in the evaluation model. And if you go on to 3.7, which is I think contained on page 11 of 19, do you see that?

A. Yeah.

Q. That suggests that performance guarantees will be measured by reference to blocking and drop-out rates; do you see that?

A. It does indeed, yeah.

Q. And in the minute of the meeting for the 18th May, the document I referred you to a while ago, there is a formal record of that, paragraph 3.7, and the formula contained in it being approved. It says it says "Paragraph 3.7 formula approved." That's Document 64, Book 41.

Can you help me in light of what you said earlier about the dissatisfaction, as you saw it, I think, on the Department's side with the Andersen approach to blocking and drop-out rates, why they nevertheless seemed to have formally approved it at this meeting, at which I think everyone was in attendance?

A. I wouldn't have used the word "dissatisfaction". I think it's just difficulty in making two models fit together. I suppose the concept of performance guarantees by applicants was a concept, to use Sean McMahon's words, dreamt up by me when I was putting together the original approach to the competition; and I put it in there, and it really only got defined for other people when we came to respond to questions posed by applicants, which was much later than this meeting. And at that stage I started to elaborate



what I had in mind when I put it into the criteria, which was, you know, "Show us the colour of your money; how do you raise our comfort that you will deliver the project in the time-frame that you say you will?"

And that's where you come to I don't have here, but the memorandum for the information of applicants responding to questions, I think, from memory, has a very clear statement towards the end, under the heading "Miscellaneous"

Q. I have it now.

A. Okay. So

Q. Book 41, Leaf 61. For your benefit I'll put it on the overhead projector so that you'll be able to see what it looks like.

You probably remember that what happened was you took all the questions, I think, if the or somebody else collated the questions and then you put composite answers, as it were, where a number of questions related to what was clearly the same thing; isn't that right?

A. We wanted to anonymize them, yeah.

Q. That's true. "Performance guarantees. Questions posed relate to:-

" what is meant by a performance guarantee

" whether applicants will be required to provide a performance bond

" the circumstances under which the licence would be revoked."

Then it goes on: "The reference to performance guarantee in the bid document is designed to elicit in a general way proposals from applicants which will increase the licensor's confidence that they will deliver on their commitments and the applicant's suggestions for milestones by which such delivery may be measured. A performance bond is not specifically required.

"The question of revocation will be further elaborated upon in the draft licence, but in principle, it is a sanction for serious failure."

Now, that was done on the 28th April, that response.

I think you thought it was after the meeting to consider the evaluation model, but in fact, to judge from the documents we were provided with by the Department I'll just put the front page of that document on the overhead projector.

Do you see the date on the top left-hand corner, 28th April?

A. Yeah.

Q. I suppose, in light of what you said earlier, I can understand why there would have been at least differences of opinion between the Department and Andersen, but is it not strange still that when you come to the evaluation model

A. There is obviously a discontinuity there, if the dates are correct. And I have no reason to believe that they are not correct, but the memorandum responding to questions was prepared with an input from the consultants. So there seems to be some discontinuity

Q. I agree, and not just all the Department's fault. Andersen was proposing this having participated in answering these questions?

A. Yeah.

Q. Well, I suppose, in fairness to him and in fairness to the Department, is it possible that what was envisaged was that "Look, for the quantitative, what we'll do is approach it in this way, and we may have a different approach when it comes to the qualitative"?

A. I don't think it was consciously done like that, and that would be completely out of accord with the sentence you have just read.

Q. Well, I'll just remind you now that Ms. Nic Lochlainn turned up a number of documents in which, clearly, at various meetings, Mr. Andersen was able to inform the Department that one approach might be taken to something in the course of the quantitative which would elicit only a certain limited amount of information, while in the quantitative, you'd adopt perhaps a slightly different approach and get a lot more information or evaluate a much wider type of

performance, if you like.

I am just suggesting, is that possibly an explanation for what you call the discontinuity here?

A. I don't actually think it's a reasonable explanation, in the sense that the statement in the memorandum which we have just been referring to is very clear indeed as to what we meant by performance guarantees, and it had nothing whatsoever in it about such technical matters as blocking and drop-out rates.

Q. But to be fair, I suppose it would be hard to evaluate that quantitatively, what we saw in the response to questions?

A. Yes, I agree with that.

Q. And it might be easier to evaluate this sort of approach. I think this approach is about I think it's about how well your system works, whereas what you were trying to measure was how quickly were you going to get it up and running? Which is a slightly different thing.

A. More than that.

Q. Was it?

A. How can we be assured that you will do it in the time-frame that you claim and to the extent that you claim?

Q. I see.

CHAIRMAN: Well, maybe you were trying to anticipate what was referred to as the eventual holistic

approach; you were trying to set out the clear nuts and bolts of it from both the licensor's and the applicants' point of view?

A. The business of performance guarantee is something that I put in very early on as something of interest.

And then it got elaborated with the consultants. And at no time I mean, I can't explain why, in this quantitative model, performance guarantees are expressed as blocking and drop-out rates, because they have no connection back to the memorandum we have just been reading.

Q. MR. HEALY: None. I am wondering why it happened, then, and why, since I mean, I hadn't envisaged going down this road, but it's certainly something that stuck in your memory, isn't it, somewhat odd that nobody mentioned at the time "Hold on a minute here, this isn't going to measure what we have in mind at all"?

A. When you say "stuck in my memory", it's something that occurred to me in looking at the various questions that have arisen in evidence in this Tribunal.

Q. But what I am saying is you remember having, if you like, promoted the notion of a performance guarantee in the form set out in that response; in that sense, it was an idea that of which you were the progenitor, if you like?

A. Yes.

Q. And when you come to it at this meeting, chaired by you, and we have seen your style at meetings, it's no wonder you didn't say "Hold on a minute, is this going to be of any help to us at all?"

A. It's just one of these things.

Q. If you go to if you just go back to where we were, in any case, which was page 3 of 19, and that page simply related the indicators to the evaluation criteria.

The next page is, I suppose, effectively, a re-statement of all of this. Mr. McMahon has a note: "This page unclear. AMI will take out." And they did take it out.

A. Okay.

Q. Then if you go on to page 6 of 19, what you then have in that page and a number of following pages is a discussion of how you're going to measure the applicants' proposals with respect to each of the dimensions and each of the indicators?

A. Mm-hmm.

Q. If you just look at the first one. The dimension is market development, the indicator is forecasted demand, and you have a formula, a proposal for a formula as to how this is to be done; do you see that?

A. Yeah.

Q. I think some of these formulas, the suggestion was made as to changes in some of these formulas. If you

look at the note of the meeting, it says "An indicator was added to represent active minutes. Figures should be as at the end of Year 4."

And I think what that translated into ultimately was what we have now come to know as Market Penetration Score 1 and Market Penetration Score 2: I am not going to dwell on them all. I am just giving that you one as an example.

A. You can take it, in terms of understanding how those formulas would work in practice, there was some people in the group who understood it better than I did.

Q. Of course. Especially when you get to some of the very, very engineering-type issues.

A. Yeah.

Q. Well, in any case, each one of these seems to have been discussed to a greater or lesser extent, and as far as I can see, they were all ultimately approved, or approved with changes, and so forth. And I think, when you were last in the witness-box, we mentioned one which was number 3.11; it's on page 15 of 19.

That was the dimension financial key figures, of which the indicators proposed were solvency and IRR. And the IRR, the proposal as to how you'd calculate IRR were changed?

A. They were changed after a lengthy discussion.

Q. Yeah. Now, then if you go to the next page, page 16 of 19, you have at number 4, you have vote-casting and

weight matrix. "The following table shows how the votes will be given for each of the indicators in the quantitative evaluation. A list of the various is included."

Some of the inelegant expressions are taken out, but that was effectively adopted as an introduction to that portion. Now, what you have on the left-hand side are all of the indicators, the 13 indicators.

Some of them are related, and in fact, I think they break down into something like 11 dimensions. The indicators are listed here, or set out here in the first column on the left-hand side, in a form which doesn't easily translate into what's contained in paragraph 19; but in fact, if you go back to the very first table, every one of them can be translated back to paragraph 19.

And on the right-hand side, then, you have a set of weights or weightings proposed by Mr. Andersen, and as you said yourself earlier, he had to some extent prefigured this in his tender document, and he has a weight proposed for forecasted demand, for example, of 10, speed of demographical coverage, 10, and so on, or .10, whichever way you want to look at it.

Now, just to put this in context a little, I've got a sheet of paper here which brings these together in a way which makes them easier to understand. Now, I'll let you have it, and we'll let other people have



copies.

(Document handed to witness.)

Do you see the table I have just given you?

A. Yeah.

Q. I'll go through it briefly. In the left-hand side you have the evaluation criteria in the RFP; all right?

A. Mm-hmm.

Q. The next column you have the dimensions linked to each evaluation criteria. In the next column you have the indicators for the dimensions.

A. Mm-hmm.

Q. Then in the next column you have the weights as proposed in the evaluation model dated 17th May, 1995.

That's the one that was considered at the meeting of the 18th May?

A. Mm-hmm.

Q. And what you have is the weight proposed for each one of the indicators; okay?

A. Yeah.

Q. And then on the next column you have those weights drawn together to give you the total weighting for that particular criterion; do you follow?

A. Yeah.

Q. The next column speaks for itself. You have the same thing again, as set out on the 8th June version of the evaluation model, and then you have the total again in the last column; do you see that?

A. Mm-hmm.

Q. Now, for the moment, if we just stick to the first two columns, containing the weights to be applied to the indicators and ultimately, when totalled, to be applied to the dimensions and the criteria for the 17th May. You see that the proposal for the first weight was 30, the second one 20, then 15 for tariffs, 10 for the licence payment, 10 for coverage, 5 for international roaming plan, 5 for quality of service and 5 for frequency efficiency.

Now, anyone looking at that would see that you had a problem straight away, because apart from the first three, the proposed weightings did not respect the descending order of priority; isn't that right?

A. Correct.

Q. And you have two groups where you have 10 and then sorry, one group of two criteria at 10 and one group of three criteria at 5 each.

Apart from the first two criteria, the weightings applied to all of the others did not involve multiple weightings of indicators. I know that if you look at blocking and drop-out rates, you'll see that's in at 2.5 and 2.5, but in fact they were just two sides of the same coin, if you like, so that's a 5.

Now, I just want to finish the model, and then I want to come back to that, because I want to go on to how you adopted an actual overall set of weights to be

applied to the various criteria.

The next page on the model is page 17 of 19, and it sets out the procedure for the qualitative evaluation process. And I think the introduction and one or two other parts are worth reading.

"Despite the "hard" data of the quantitative evaluation, it is necessary to include the broader holistic view of the qualitative analysis. Other aspects, such as risk and the effect on the Irish economy, may also be included in the qualitative evaluation, which allow for a critical discussion of the realism behind the figures from the quantitative analysis.

"The following describes some of the major steps in the qualitative evaluation process:

"1. The eligible applications are read and analysed by the evaluators.

"2. The eligible applications are evaluated by way of discussions and analyses.

"3. When deemed adequate and necessary, in-depth supplementary analyses will be carried out.

"4. Initially the marks will be given dimension by dimension. Afterwards marks will be given aspect by aspect (subtotals) and finally to the entire applications (grand total).

"5. When the dimensions are"

I think Mr. McMahon has written in, "being assessed";

maybe it was "assessed"

"The evaluators should, as far as possible, use the same indicators as used during the quantitative evaluation. New indicators may be defined, however, if the existing indicators are not sufficiently representative for the dimensions to be evaluated.

"6. During the qualitative evaluation, the evaluators must take the results from the quantitative evaluation into account and only compensate when necessary in order to make fair comparisons between the applications.

"7. If major uncertainties arise, for example, in accordance with Step 4 of the quantitative evaluation or due to incomparable information, supplementary analyses might be carried out by Andersen Management International in order to solve the matter.

"8. The results of the qualitative evaluation will be contained in the main body of the evaluation report. The results of the supplementary analyses will be annexed to the report."

Then on the next page, Section 6 contains what's called a guide to the award of marks.

It says: "In order to guide the mark-giving, a matrix has been elaborated below. The dimensions and indicators are not weighted ex ante. The marks will

be awarded an according to a "soft" 5-point scale, A, B, C, D, E, with A being the best mark. Averaging will be made after consensus among the evaluators."

A. And this clearly is back to the sort of Andersen model view of the world, and things like risks and effects on the Irish economy didn't appear at all in paragraph 19. And in fact, effects on the Irish economy couldn't be taken into account, probably, under European law in any event.

Q. Yes, that's right.

We'll come on to the next one that you adopted; you'll find that it was left there. What I want to leaving aside that, and I think that was taken care of in the evaluation, it was decided that you couldn't take it into account; but I just want to draw your attention to the table here and the description contained on page 5 of some of the major steps in the qualitative evaluation process.

And if you just look at the table, I think what Mr. Andersen is saying is that you give the marks initially dimension by dimension; so in the marketing aspect section, you give the mark for dimension market development, the mark for dimension coverage, the mark for dimension tariffs, the mark for dimension international roaming plan. And then you subtotal those to get the subtotal for marketing aspects. And so on, the same with technical aspects, financial

aspects, management aspects and other aspects. And then at the very end, you subtotal the entire of the sorry, you grand-total each of the subtotals to give you a final overall mark.

Now, I am not going to dwell on that here; I'll come back to it when we come to the second version of the evaluation model, the one that was ultimately adopted.

On the next in the next leaf, you'll see a note to file headed "Confidential". And Ms. Nic Lochlainn notes: "Agreed at the meeting of the 18 May 1995 30, 20, 15, 14, 7, 6, 5, 3."

Now, I don't know whether Ms. Nic Lochlainn was being laconic or what, but perhaps she was trying to be as confidential as possible, simply listing a list of numbers which we all know related to the weightings, and I suppose she knew everybody involved would know what was involved, and there was no need to be advertising it in case somebody else, by whatever means, managed to get a look at the document.

And you can see that the first three weights proposed by Mr. Andersen, 30, 20, 15, you see that seemed to you seem to have run with those. Then the up-front licence fee is in at 15; Mr. Andersen had proposed 10. Coverage, you give 7 to; Mr. Andersen had proposed 10. And you give 6, 5, 3 to international roaming performance guarantee and frequency efficiency, where Mr. Andersen had proposed 5, 5, 5. Do you see that?

A. Yeah.

Q. Can you remember agreeing those weights?

A. I can remember that the weights, as in Ms. Nic Lochlainn's note, were agreed, yes.

Q. Can you remember what sort of discussion took place?

A. There certainly was a discussion around the need to respect the descending order of importance, which Andersen hadn't done. After that, I don't have a clear recollection. I mean, I am still struck myself by the performance guarantee 5. We have discussed that already; we won't go into it again.

But no, I don't have a very clear recall of it. But it was not a short discussion; I'll put it like that.

Q. Can I just try to tease it out a little with you. If you go back a moment to that table I gave you, and if you also go back to page 16 of 19 on the first version of the evaluation model.

Now, I have drawn well, I can't say I have done it; I have arranged for one of the researchers to draw together all of the weights so that they can be understood by reference to paragraph 19 evaluation model. At the time that you were working on this document on the 18th May, you didn't have the advantage of a document like that. What you had, as far as I can see, all you had was what's on page 16 of 19; do you see that?

A. Yeah.

Q. In order to see what Mr. Andersen was proposing, now, I don't know what way you did it, but it seems reasonable that somebody would have looked at what he was proposing, in any case, and as you say, if you recall there being a problem with the failure to respect the descending order of priority, then that problem wouldn't have been perceived unless somebody got out a pen and paper and perhaps laboriously did the little exercise that I have had replicated in this document; do you see that?

A. Yeah.

Q. And said "Look, we can't run with this; there is a few problems with it".

So somebody must have drawn together, or I am suggesting that somebody must have drawn together the various weights contained on the table on page 16 and re-ordered them to make sense of them in the context of paragraph 19. Even if somebody didn't do it on a sheet of paper, it must have been done item by item, if you know what I mean.

A. I am not sure that I had this page opened when that discussion was taking place; I'll put it like that.

Q. I understand that.

A. Or who else did, I don't know.

Q. Well, it's just I suppose there is some significance in the fact that the first three items, 30, 20, 15, are as had been proposed.



A. Yeah, but you would have had first to relate the table on 16 of 19 back to the RFP, and I suspect what we had out was paragraph 19 and trying to make sense of it. In that context, presumably with Michael Andersen, or whoever was there from Andersens, driving the discussion a bit.

Q. Well, it wouldn't have been hugely it would have been tedious but not difficult. What you'd have had to do was you'd have had to pull out two pages of this document. You'd have had to take page 3 and page 16 and put them side by side. I mean, it's tedious, but it's not difficult. You put page 3 and page 16 side by side, and you could easily, I mean, it's one of the ways I first did it, before ever this document I have given you was produced; I simply put the two pages together and I totted it up using, in a pencil

A. I don't know what evidence other people have given, but I have a feeling that the discussion was more around well, credibility of business plan and applicant's approach to market development is clearly stated to be the most important criterion. Does that mean 30, or does it mean 25, or does it mean something in between? Let's fix that at 30 and move on for a moment. And then, when we get a shape on it, to revisit it and see are we comfortable with the overall shape? I think that was more the nature of the discussion we had than relating it specifically to

page 16.

Q. A lot of people have said that their recollection of agreeing what I'll call "the headline criteria" in the way you have just described; what are we going to give to credibility of business plan, and so on. But you'd have to agree, wouldn't you, that there is some significance in the fact that if you take Mr. Andersen's table and do you the tot, or if you take the first item, what are we going to give to credibility of business plan? And you simply look at Table 16 and you do the tot, you'd come up with 30. If you had been discussing it that way, you might have said "Fine, that's a very important one; we'll give that 30". If you want to do the tot on the next one

A. But you start by saying, on this table, which are the ones that bear on credibility of business plan? And I don't recollect us doing it that way.

Q. I see. Those are the only three, as I mentioned to you earlier, the first in fact the first two are the only two where you'd have to do a significant amount of searching around, if you understand me, to relate the two documents.

A. But even the fact that Andersens, when they eventually did it, came up 103 instead of 100, would seem to bear out what I am saying, that we were looking at it from a different point of view.

Q. Maybe it would and maybe it wouldn't; I'll come to that in a minute. But I take your point.

One way or another, after the meeting, a set of criteria had been agreed in any case?

A. Yes.

Q. Or a set of weights for the criteria had been agreed in any case?

A. Yeah.

Q. And I think we have to assume that everybody at the meeting knew that the indicators were going to be weighted, and that's where you'd get the information from, even if they hadn't if they didn't have the discussion you had discussed?

A. Yeah, I think that's reasonable.

Q. Now, if you just go to the minute of the meeting again for a moment. If you go to the second page of the minute this is the one I mentioned earlier Book 41, Leaf 64, on the second page you can see a number of figures; they relate to the IRR formula. Then the next item is paragraph 4; do you see that?

A. Yeah.

Q. And I think that's the reference to the weighting matrix; do you see that? You can take it it is, anyway.

A. Yeah, okay.

Q. "Reference can be made on the file to the formulae agreed." So obviously Maev doesn't want to identify

in the minutes of the meeting which were going to be circulated, even if only amongst you know, quite a tight group, they weren't going to go outside the PTGSM, she didn't want to have the weights appearing in a way that they could be identified.

A. Yeah.

Q. But she does, nevertheless, in her note make it clear that what she is referring to is paragraph 4; do you see that?

A. Yeah.

Q. And it seemed to me that I must be right, therefore, or I'd suggest that I must be right, therefore, in thinking that people were looking at page 16 of 19 and were looking at para 4, Section 4, whatever you want to call it, the vote-casting and weight matrix, when you were discussing that?

A. I have said already that I don't think, certainly in terms of the documentation I was looking at at the time, I was more looking at it from a common-sense point of view: Here's paragraph 19, trying to get a balance in terms of this scoring.

Q. But you did come up with the same figures as Mr. Andersen's

A. He was participating in the discussion, don't forget.

Q. Of course.

A. So to say that the formula was agreed only in the context of paragraph 4 or only in the context of

quantitative evaluation, I can't accept that. I think what we agreed was the weightings to be applied for the selection process.

Q. You are anticipating something else now. You are saying

A. I am not particularly anticipating anything. But as far as I can see, you are trying to link the weightings formula to the quantitative evaluation and paragraph 4 in particular. It was always my impression is now, was then that we agreed a list of weightings as per the one-line note from Ms. Nic Lochlainn, which was to be applied to paragraph 19 of the tender document.

Q. I appreciate that. I am just asking you to look at the document, and to look at the note of the consideration of the document, and we'll take it in two steps. Your recollection is that what you agreed was a list of weights on paragraph 19, full stop?

A. Yes.

Q. I don't have any problem with that. That's your recollection. And a number of other people have a similar recollection.

What I am trying to find out is, how did you decide whether it would be 30 for the first criterion as opposed to 25, as you said, or why it wasn't 40, or why it wasn't 50, or whatever? And if you look at Maev Nic Lochlainn's note, her note, which is a fairly

careful note dealing with each section, refers to paragraph 4 when she comes to set out the weights.

And what I am I am not trying to deal with the issue of whether these were the weights fixed for everything or not; that's not what I am trying to find out at all. I am simply trying to find out, what was your starting point? Where did you start when you were discussing these issues?

And I am trying to use the documents in some way to stimulate your memory. And what I am saying is, if you look at the documents, it's interesting that Mr. Andersen's proposal of 30, 20, 15 is what you eventually went with, and that 30, 20 is not it's a bit tedious, but it's not difficult to derive from the information contained in page 16 of 19. And I am saying that if you take that fact and Maev Nic Lochlainn's note which refers to it, that it's probable that you might have been discussing it in the context of the information contained in that page.

A. I mean

Q. I am not trying to pin you at all down I can quite understand the point you are making about the same weights. It seems to me to make perfect sense.

That's not the issue I am interested in at all. Just how you arrived at them.

A. Well, I think we arrived at it by looking at you know, we have proposals from the consultants; are we

comfortable that the right ballpark for the top priority is 30? Should it be a little less? Should it be a little more? That then looking at sort of trying to achieve a balance, trying to respect the descending order, trying to leave an appropriate amount of marks for the lesser items at the end, and so on. That's what I believe happened in the discussion.

Q. I understand that. But you don't have a memory

A. Whether it was related then at that time to this page, I don't remember me making that connection at that time.

Q. Yes, I appreciate that. I am starting from, if you like, your starting point, that you don't remember very much about it, and I am trying to look at the documents

A. I wouldn't say I don't remember very much about it. I remember we had a fairly lengthy discussion about the relative values being given to the various criteria and the extent to which they respected the descending order and whether the kind of weightings we were giving them was appropriate for the kind of competition we were running. We certainly had that kind of discussion. But I don't remember us having a discussion which says, "Well, Andersens proposed, let's see, 10, 10 and 2.5s; will we make that" I don't believe it happened that way. But you have had

lots of witnesses.

Q. If you go on to the next part of the minute, the minute notes: "The qualitative evaluation was to provide a common-sense check on the quantitative model. This part of the model would need to be clarified further before evaluation begins. If a later challenge were to reveal that any two persons among the evaluators proceeded with a different understanding of the process, then the entire evaluation process could be put in question."

It goes on: "Logistics work plan for evaluation of tenders." I think it's how you're going to do things.

It was noted at the very end, "It was agreed that everyone would strive to maintain an overview while focusing particularly on their own area of expertise".

I think that's the end of the minute on this issue, because you go on to discuss interconnection regimes and the controversy with the EU.

Would that note of Ms. Nic Lochlainn's accord with your understanding of the relationship between the quantitative and the qualitative, that one was a common-sense check on the other?

A. I am not so sure I would have expressed it that way.

Q. I suppose there must have been some agreement at the meeting that that was the way it would be it would have been approached?

A. I don't know. I mean, writing reports of meetings is



an individual thing.

Q. We know from Ms. Nic Lochlainn that she only recorded things that were agreed.

A. Okay. The meeting took place on the 18th, and the report is dated 31st. I am not trying to give you an answer one way or the other. I certainly was impressed with the idea that everybody should understand it properly. But if you are asking me now, was that my understanding then, I can't recall.

Q. I see. In any case, if you look at it now, it does seem to involve, to some degree, two complementary modes of evaluation?

A. Yes.

Q. One has the benefit of hard, concrete information but over a very limited range, and the other is the benefit of softer, perhaps more impressionistic information or evaluation over a much wider area of an applicant's proposed or proposals or proposed performance.

A. Yeah.

Q. What you gain in hardness, if you like, or concreteness in the quantitative, you lose in terms of breadth, and in the other one what you lose in concreteness you gain in terms of breadth.

Now, we can pass over the note to file, because we have mentioned it, and go on to the second version of the evaluation model.

This again is Mr. McMahon's copy. It says "From AMI on the 8th June, 1995. Second draft of AMI's paper, not to be removed from file, not to be copied." Do you see that?

A. Yeah.

Q. I am just trying to find the note of the meeting of the 9th June.

Now, the introduction on this this was a version that was presumably put together by Mr. Andersen consequent on the discussions that you'd had on the 18th May, and he presumably incorporated changes as per those discussions, for a reason which isn't entirely clear to me. As I said to you, the reference on the first page to the assumption that there would be familiarity with the tender document was removed.

There were a number of other changes in the technical information contained in Section 3 to reflect the fairly technical discussions that you'd had at the meeting of the 18th May.

In the note of the meeting, which is Leaf 70 of Book 41, there is a very small section dealing with the evaluation model: If you look on the overhead projector, you'll see it, because I want to refer you to another document. It says "Evaluation model.

" it was approved as presented with correction of one minor typo on page 6 of 21.

further comments, if any, to be forwarded to Maev

Nic Lochlainn within a few days of the meeting."

Do you see that?

A. Yeah.

Q. I then want to refer you to a document which is in the book of documents I have given you a moment ago. This document is contained in Book 52, Leaf 26. If you look at the little book of documents, you'll see one of the last leafs contains that reference, and that will bring you to the document. It's a note of Ms. Nic Lochlainn's of the 21st July 1995. Can you see that?

A. Yeah.

Q. It's a note, it's a memorandum; it seems to be a memorandum from Ms. Nic Lochlainn to you.

A. Mm-hmm.

Q. "Re evaluation of tenders for the GSM competition."

This is dated the 21st July, 1995.

"The 7th meeting of the GSM Project Group on the 18 May 1995 approved the following weightings for the quantitative evaluation of the selection criteria for the GSM competition:"

Then you have the weightings.

"Subject to further comments being submitted in writing to myself, the 8th meeting of the GSM Project Group approved the paper on the evaluation model presented by Andersen Management International, with the correction of one minor typo on page 6/21. No

written submission was received, and so it can be taken that the model has been approved.

"A single copy of the evaluation model (marked with Fintan Towey's name) is being held securely in the division.

"Please indicate your approval of the above as a basis from which to proceed with the evaluation of the tenders for the GSM licence."

That seems to have been a formal adoption of the evaluation model.

A. Yeah, the date of it is a curiosity. Whether it's a typing error or what, I don't know.

Q. You mean the fact that it's dated July, is it?

A. Yeah, 21st July.

Q. Maybe it's because Ms. Nic Lochlainn was waiting to see whether anybody got back, or... I don't know.

A. Okay. It's not that important.

Q. I suppose I simply draw your attention to the fact that Ms. Nic Lochlainn seemed to approach it, and all matters connected with weightings, in a fairly sort of formal way?

A. Yeah.

Q. More formal than the way you approached or anybody approached other matters in the context of the entire process?

A. I have a feeling she may have been very new to the division at the time as well, so that may have caused

her to be a bit extra-careful.

Q. I accept that, but she approached the question of the weightings with an additional degree of formality, is what I mean. If you look at all her other notes, they are all of a piece, both her notes and other people's notes. But when you come when it comes to the question of the weightings, she seemed to give it an additional degree of both confidentiality, security and formality, and I think that was wasn't that a feature of the meetings as well? I think you pointed that out to me in our very first session in the witness-box, that you didn't even make some of the minutes available outside the Project Group. For instance, you didn't give them to Mr. Fitzgerald and so on?

A. Oh, yeah. It's not so much that I didn't, it's that I arranged that it wouldn't; do you know what I mean?

Q. I accept that. Now, if you go to page well, maybe I'll just deal with some of the other changes in this for a moment.

Obviously somebody checked the or a number of people involved checked the evaluation model to ensure that they had it was what had been agreed, at least to the extent which somebody referred to a typo on page 6 of 21. The page that Mr. McMahon wanted removed had been removed.

If you look at the very last section, last page, a new

section had been added: Section 7, dealing with the interplay between the quantitative and qualitative evaluation. Do you see that?

A. Yeah.

Q. And as we know, the weights in Section 4 have been changed. They are shown on page 16 of page 16 and 17. Now, if you go back to the table that I gave you, which is an easier way to compare the two sets of weights, we have this, what we now know to be the total of weights coming to 103.

A. Mm-hmm.

Q. And the weight for the first criterion is 32.5, as against the 30 which had been agreed. And the weight for coverage was 7.5 as against the 6, I think or as against the 7, I think, which had been agreed?

A. Yeah.

Q. Now, do you remember you were saying to me that Andersen was a part of all the discussion about the weights?

A. Yeah.

Q. Can you offer any explanation as to why he would have given weights to the first criterion or a weight to the first criterion of 32.5?

A. It seems to me, looking back at it, he simply made a mistake, and it's to do with trying to merge his own model with our model.

Q. Well, I can see that, but isn't it he arrives at

his figure by taking the indicators and totting them up; isn't that right?

A. It seems to be, yeah.

Q. Because if you look at page 17, what you have again is a list of the weights to be applied to the indicators, and you have to do the exercise that I have carried out, or that I have had carried out, to arrive at the total weights for each of the criteria?

A. Yeah.

Q. Is it likely that, contrary to what you were suggesting a moment ago, there must have been a discussion of how you divided up the weights within the criterion, and that when he was taking part in that discussion, Mr. Andersen, or neither Mr. Andersen nor anybody else, if you like, twigged to the fact that when you added up the weights in the first criterion, they came to 32.5?

A. I don't know, I mean, I suspect that in the first discussion, we were talking about everybody had their own approach. And I have described what I recollect of my approach, which was not looking at the table and picking out figures; it was looking at the overall balance in terms of the competition. And I don't want to repeat myself. It could well be that Andersens, and indeed others, may have had a different approach.

Q. Well, if we just look at that for a moment. I wonder,

are you correct in that recollection? Because here you were trying to evaluate a whole load of applications, not just by reference to headline criterion. If you like, they were gone out the window at this stage. You were not going to look at anyone's application on the basis of credibility of business plan and applicant's approach to market development; you were going to look at it in the context of a whole load of indicators and sub-indicators. Isn't that right? That's what you were going to be looking at, and that's what you did look at; isn't that right?

A. It may sound like an arrogant statement, but I think if I had been focused in the way you are suggesting, I would probably have spotted the error.

Q. Maybe you would have, but on the other hand, if you weren't focused if you weren't focused that way, how could you form any view as to whether the approach being adopted by Mr. Andersen was one that you could run with? After all, here he was saying that these criteria, which had been approved by Government, were now going to be broken down into different elements. Surely you had to satisfy yourself that his proposals weren't mad or off beam or unreliable? Surely you had to say that in relation we'll take the table I produced, we'll take the first one, credibility of business plan and applicant's approach to market development, surely you had to say, "I am happy with



that, market development, experience of applicant and financial key figures, and I am happy that financial key figures would be evaluated by solvency and IRR, experience of the applicant will be evaluated by reference to the number of network occurrences, and market development will be evaluated by reference to forecasted demand"?

A. All I can do is keep repeating that as chairman of the meeting, I have no recollection of looking at it, at that time, in that way.

Q. But wouldn't it be surprising if you hadn't, is my point. You had to be sure that Mr. Andersen's proposals were workable, didn't you?

A. We collectively certainly did, yeah.

Q. And can I suggest to you that it wasn't enough just to be happy that Mr. Andersen was going to weight credibility of business plan at 30, as you all agreed, but you'd have to be satisfied that you were happy with the breakdown of the weighting as well. You couldn't have all the weights going to you couldn't have all the weight going to market development, for instance?

A. I am not saying that I wasn't conscious of it or that I ignored it. What I am saying is that in agreeing the 30, 20, 15, whatever it is, that at that time, my mindset was related to paragraph 19 and the overall balance.

Q. But you knew, surely, that ultimately the work was going to be carried out by reference to the individual weights to be given to the indicators?

A. I guess I did, yeah.

Q. And it seems only reasonable that you would have, to some extent, have said, "Well, that breakdown seems okay; I'll run with that". You must have devoted I mean, I agree you may not have remembered it; I am suggesting to you that you must have devoted or somebody at the meeting or the meeting in general must have said, "We are happy with the breakdown", because the breakdown was the key. You couldn't have Mr. Andersen giving all the weight to one indicator or one dimension in a multidimensional evaluation criteria?

A. I don't know if I can assist you any more with this. I can only tell you what I recollect. And I mean, you can sort of lead me to recollect different things, but I can't say so. I just don't recollect.

Q. I am not doing that. As I said before, I want to give you the opportunity to try it every way. I am not suggesting that you aren't assisting me at all. You are being of assistance.

Weren't these, in a sense, the building blocks of the evaluation?

A. Yes.

Q. You were going to be stuck with these at the end of the day?

A. Yes.

Q. Now

CHAIRMAN: We will leave it till two o'clock.

MR. HEALY: Maybe I'll finish off in Section 7, and we'll be finished with this document. We can move on to another one. It's because of the fact that I'll be referring to it later on.

Q. MR. HEALY: I just want to refer you to the short section that was added on the interplay between the quantitative and the qualitative evaluation. It says "Initially the quantitative evaluation is conducted in order to score the applications. This initial score will be given during the first three weeks after the 23rd June. This initial score, together with number-crunching performed on the basis of Excel spreadsheets, will then form the basis for the presentation meetings and the qualitative evaluation." I think the order was going to be, you do the quantitative evaluation; that would help you in the presentation, and it would also help you to get going on your qualitative.

It says "When the bulk of the qualitative evaluation has been performed, however, this evaluation will conversely form the basis for a recalculation of scoring applied initially if mistakes, wrong information or similar incidentals can be documented."

Am I right in thinking what that means is when you

have the bulk of the qualitative done, it would form the basis for a recalculation of scoring applied initially, meaning in the quantitative?

A. That's what it means, yeah.

Q. Then it says "The results of both the quantitative and the qualitative evaluation will be contained in the draft report with annexes to be prepared by the Andersen team."

Now, at that point, if you read this document and if you were familiar with the tender document, you'd say, "Well, we'll end up with a quantitative, a qualitative evaluation". They might be the same; if they were, that would be great. There was no guarantee they'd be the same. Isn't that right?

A. Yeah.

Q. All right, we'll take it up after lunch, then.

A. Okay.

CHAIRMAN: Two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY

MR. HEALY:

Q. MR. HEALY: Just before we leave the evaluation report, or the evaluation model, rather, Mr. Brennan, what you were doing when you adopted the evaluation model and just for a minute we'll leave the question of weightings out of it is, as I said, and

I think as we agreed, you were agreeing on a set of building blocks that you'd use to carry out the evaluation?

A. Mm-hmm.

Q. And the building blocks were the indicators and certainly in the case of the qualitative, any sub-indicators that you also decided on; all right?

These were effectively the tools of the evaluation?

A. Yeah.

Q. And the RFP was now out of the picture in one sense, in terms of the mechanics of the process?

A. I don't know what you mean by "out of the picture".

Q. Really, what I don't mean is that it wasn't what you were working towards, but you had transposed it into a number of indicators, and it was those indicators were going to be used to evaluate the applications, so that the RFP was not something you were going to be looking at directly in carrying out the mechanics, the nitty-gritty of the evaluations. What you were going to be using were, or was the indicators, and the sub-indicators where necessary?

A. I think I don't know if we were looking at it quite like that, but yes, once we had the model, the model became predominant.

Q. I don't mean that the RFP was being ignored, but you had transposed it into a set of tools that you were now going to use, and it was those building blocks,

those tools, those indicators that you were now going to focus your attention on. You had to; you decided to do that?

A. I think that's fair enough, yeah.

Q. And to get back to this point about agreeing the weightings, and I am not talking about the headline weightings now, the 30, 20, but how you came to arrive at those figures and to what extent you paid attention to the splits suggested by Mr. Andersen; in view of the importance of the indicators, is it credible that you would have let, you personally or the Project Team, would have allowed Mr. Andersen off on a frolic of his own, as it were, as to how he split up the weightings?

A. I don't know; is that a pejorative description of what happened? I mean, we did engage consultants, at significant expense, to assist us with the process. I mean, is it a frolic of his own that the total came to 103 instead of a hundred, or was it just a plain mistake? I think it was just a mistake.

Q. Leave that out the 103. That's not such a big issue.

A. It does help me answer your question, let's say.

Q. Well, you are asking me a question, a rhetorical question; you said is it a frolic of his own that it came to 103, all right, that's a mistake that somebody made, he seems to have made it?

A. I just thought the use of the word "frolic" was a

peculiar word to use in the circumstances of what you are asking me.

Q. Well, what I am asking about it this: You see, as I suggested to you before lunch, it seems hard to see how you or the Project Team would have failed to scrutinise the indicators so as to be sure that they tallied with the RFP, to put it in simple terms, so as to be sure that the indicators tallied with Government policy. You had to be satisfied on the indicators, didn't you?

A. All I can do is keep repeating that my primary focus was on paragraph 19 and the realism of the overall weightings in that context. That's what I recollect as my primary focus. Did I have an eye to other things? I may well have done, but I don't recollect it.

Q. Well, all I am asking you to do is to agree or disagree with me that it's unlikely that the Project Team wouldn't have scrutinised the indicators and said "We are happy enough with those indicators; they seem to reflect" I mean, they had to be sure they were going to reflect Government policy. Is it reasonable for me to assume that they must have looked at them and said "Yeah, we are happy enough with those; they seem to reflect Government policy"?

A. No, to me, Government policy is as expressed in paragraph 19.

Q. Correct.

A. Beyond that is the mechanics of implementing it, and yeah, I guess around the table, some people were probably watching that mechanic thing was right, and I believe what I was focused on was paragraph 19 and the balance of the weightings.

Q. All right. So therefore I think you are saying it's not unreasonable, or are you saying it's not unreasonable to assume that people around the table were looking at this and were happy, because everybody seems to have said in evidence that they were conscious of paragraph 19, seemed to have been happy that what Andersen was proposing and what you were now running with, paragraph 19 was effectively gone from the mechanics, was a reflection of paragraph 19?

A. Yeah, I guess that's the logic of having a model.

Q. It must have. If you were concerned about it, it must have been, unless you were going to let Andersen off and do everything himself?

A. Or put it another way: I don't recall anybody starting a debate to the contrary effect.

Q. Yes, all right, that's fair enough. And I want to take that a step further and say that in looking at the weightings proposed, it wasn't enough just to look at the 20, 30, 15 and so on; that you had to look at the split, otherwise somebody else would be dictating the priorities to you?



A. No, I mean, I have the impression that you are asking me the same question since about twenty past twelve, and I can't give you any better explanation than I am trying to give. I am not trying to be evasive; I am just trying to tell you what I remember. And what I remember, for me, was the predominance of respect for the descending order of priority and the balance relative to paragraph 19.

Q. I am trying to ask you whether it's reasonable for me to assume that people must have

A. I think it's reasonable to assume that

Q. paid attention to the split.

A. around the table that that aspect was taken into account. What I don't have is a strong recollection to the extent to which I personally took it into account.

Q. That's fine.

And if you look at that table I gave you this morning, you'll see that Mr. Andersen originally proposed, in relation to the first criterion, where you had where you agreed a score of 30, his original proposal was 10, 10 and, if you like, 10; do you see that?

A. Mm-hmm.

Q. And in the next multidimensional criterion, he proposed 15, 5; do you see that?

A. Mm-hmm.

Q. And ultimately, on the 8th June, he inserted 10, 10

for that; do you see that?

A. I do, yeah.

Q. Now, 10, 10 we know was definitely the split that you adopted in the final evaluation report.

A. Yeah.

Q. And one assumes there must have been some discussion of that technical split around the 18th May, or the 8th June the 18th May, in fact, wouldn't it?

A. I think that's probably true, yeah.

Q. Because a change from 5 to 10 is a massive change, isn't it?

A. Yes.

Q. It's the biggest change that I think you made one of the biggest changes you made?

A. Okay.

Q. And what it seems to me is that, seeing as we know that there was definitely a discussion in relation or there must have been some discussion to switch from 15, 5 to 10, 10 in relation to the quality and viability of technical approach, there must have been a similar discussion in relation to credibility of business plan. But somewhere along the line, somebody got their figures mixed up, because these do not add up to 100; they add up to 103.

And what I am suggesting is that Mr. Andersen was not off on a frolic of his own and that he made these changes, he deviated from his own proposals on the

basis of what people had said to him but failed to realise in the course of his discussions, when accepting these figures, that they were going to tot up to more than 30 in the case of number one, and more than 7 in the case of the fifth criterion?

A. Yeah. And I think I said this morning that it seems to me that if the group of people who were around the table were sharply focused on this particular matter, that they would have spotted the difference.

Q. What I am suggesting to you is, you see, what they were discussing around the table was the split.

A. Mmm.

Q. That's my point.

A. Okay.

Q. Because if you look at the table that was proposed by Mr. Andersen, the split, as I said to you earlier, was 30, 20, 15 and there was no sorry, I beg your pardon, the weighting for the first three was 30, 20, 15; there was no deviation from that. You had to change all the other ones because they didn't respect the descending order. I suggest that there mightn't have been a lot of discussion about it because of the fact that you ultimately ended up with something similar, and that then you went to discuss the splits, and that's when somebody failed to do the tot.

A. Yeah, I don't have any clearer recollection. I am sorry.

Q. You see, I am simply asking you to, if you like, suggest, or disagree with me that anything I say is unreasonable. If you look at page 17 of 21, if you were doing it on that page and you didn't have the RFP list of criteria with you, you could overlook the tots?

A. Yeah.

Q. So if you were doing the split on that page, and you were agreeing that market penetration would go to 3.7, 3.7, and so on, you might fail to realise that when you added up those indicators, which translated into the first dimension and the first criterion, that it came to 32.5.

Now, I want to just ask you to comment on one or two other documents. We'll come back to that whole question of 32.5 and the split later on. But the next document I want to ask you about is the document in the weightings book in Leaf 3. Do you remember, we discussed renormalisation before; we didn't have this document, I think, the last time you were giving evidence. When I say we didn't have it, we hadn't turned it up.

A. I thought it was around, actually, but I could be wrong.

Q. Was it? Maybe it was. If it was around, it wasn't around in the context of the other documents to which in the context to which I am now drawing it

to your attention.

A. Okay.

Q. And you can see that somebody, we don't know I don't know what the genesis of the document is, but somebody has put out or set down each of the criteria as per the Government, the RFP; do you see that?

A. Mm-hmm.

Q. And it says "Original" the original weighting as per the second evaluation, but not as per the actual agreement, giving you a tot of 103. That's then renormalised to 100, you see that?

A. Yeah.

Q. And then each of them is rounded, 31.55 is rounded to 31.5, and so on. Did you ever come across that document?

A. I think I first saw that document in the context of preparing for the Tribunal.

Q. I see.

A. I actually think it's a faulty methodology. If it had been a live discussion at the time, I'd probably have said so, and probably would have insisted on going back and fixing the weightings as the more correct way of doing it.

Q. It is a faulty methodology, because what you should do is renormalise 32.5 to 30?

A. And 7.5 to 7.

Q. And you should renormalise 7.5 to 7.

A. So it looks to me as if it was a technique developed by AMI and came into our consciousness long after the event. That's what it looks like. I don't know. I mean, I have heard the concept discussed, and I think I saw this document when I was preparing to come here the last time.

Q. Well, I can certainly there is nothing wrong with the concept of renormalisation

A. Except it's wrong

Q. provided you renormalise the correct figures. In other words, if you operated by evaluating each of the indicators in the first criterion in accordance with the evaluation model split, there'd be nothing wrong with that, as long as you renormalise the 32.5 to a 30 at the end of the day. You simply preserve the internal relativity of the indicators?

A. Yes.

Q. If we just go on to the next document. I think we may have discussed this; I can pass over it fairly quickly. It's I simply want to draw it to your attention in the context of what I said this morning about the formality that the Department and Ms. Nic Lochlainn attached to any revision of the weightings. This was the revision consequent on the EU intervention.

A. Yeah.

Q. And the next few documents are simply correspondence

between Ms. Nic Lochlainn and other members of the Project Team in which they acknowledge their they convey their agreement to the new proposals.

A. Yeah.

Q. And then the next document is a similar document to the one I mentioned to you earlier, in which, on the 27th July, 1995, Ms. Nic Lochlainn records the change whereby tariffs were raised to 18 from 15, and licence payment goes from 14 down to 11.

A. Mm-hmm, yeah.

Q. Now, the next document is a copy of the quantitative evaluation of the 30th August, 1995. Do you see that?

A. Yeah.

Q. And if you go to the second page, you see the weights?

A. Mm-hmm.

Q. And subject to the fact that the licence payment is still at 14, that set of weights is as per the evaluation model?

A. Yes.

Q. Now, you'll recall I don't think we need to turn it up that in referring to that copy or that version of the first quantitative evaluation report, Mr.

Andersen's attention was drawn to the fact that he had the wrong weights in for tariffs and licence payment,

and I think you'll recall that one of the Project

Group meetings records that he said he'd fix it up; do you remember that?

A. Yeah.

Q. But that would suggest that somebody must have looked at this at that point?

A. Mm-hmm.

Q. And whoever drew it to the attention of the meeting, nobody was cribbing about any of the splits, even though they wouldn't have known that they came to 103.

A. Yeah, okay.

Q. It wasn't new to them, in any case?

A. Yeah.

Q. Now, I want to go now to the fax of the 21st September, which is sent by Mr. Andersen, I think to yourself and Fintan Towey it's in Book I think it would be 42, I think, is it? I want to ask you to look at Leaf 111, Book 42

A. Leaf, sorry?

Q. Leaf 111 of Book 42. Does your book contain a fax from Andersen team members to Martin Brennan and Fintan Towey?

A. No, from Michael Andersen, copy to the Andersen team members.

Q. Sorry, I beg your pardon, from Michael Andersen, copy to the Andersen team members. Work programme for approximately the next ten days. We have been over this document before; I don't want to go into it in detail.

Section A deals with the remaining award of marks to



the 10 dimensions.

Section B, the scoring of the marketing aspect, financial aspect and other aspects.

Section C, the grand total. The grand total is to be scored at the meeting, 28th September; do you see that?

A. Mm-hmm.

Q. Section D, supplementary analysis. Section E, the first draft report, and section F then is the sort of round-up; it's questions to the Department.

"AMI has the following questions:

"Should the identified meeting September 28th be conducted by means of a conference call or a meeting in Copenhagen?

" does the Department wish to score "other aspects"?

" given the time-frame and the fact that we are not yet ready to begin the drafting the report, will

it be acceptable for the Department that AMI produces a non-edited report to be received by the Department by fax late October 3rd?

" how do you integrate the quantitative evaluation in the report (we prefer to leave this question unanswered, until we have the final results)?

" how do we proceed with acronyms/names concerning the applicants (we prefer to continue with acronym but at least in Chapter 2 we need to mention the names of the consortia and the consortia members)?

"We look forward to receiving the answers, and we will proceed as stipulated in this memorandum."

Now, I don't think we found a formal answer to that, a written answer to that memorandum; isn't that right?

A. I don't remember seeing one here, anyway.

Q. What I want to direct your attention to is the first bullet point in Section F: "Should the identified meeting September 28 be conducted by means of a conference call or a meeting in Copenhagen?"

We know that what happened is you went to Copenhagen with Fintan Towey?

A. Yeah.

Q. Can you recall what discussion took place, if any, on any of these questions, but specifically the first one?

A. I have no recall of that, no.

Q. Fintan Towey's recollection is that you and he discussed it and yee decided to go to Copenhagen?

A. Okay, if that's his recollection.

Q. That effectively meant that you and Fintan Towey were going to Copenhagen to try to arrive at some sort of final result; isn't that right?

A. Mm-hmm.

Q. And we have discussed this before; the final result was, therefore, as far as this questionnaire is concerned, was going to be decided by two or three of you in Copenhagen initially?

A. Except that to a significant extent, using marks that had been previously done by others.

Q. Yes, that's all right; I mean, I understand that's your position. But you were going to be pulling all these together?

A. Yeah. It's more than my position; it's the reality.

Q. Wasn't pulling all those together going to involve a degree of judgement?

A. Yes well, pulling them together, per se, is only a transcription exercise. It's what you do to them afterwards brings in a judgement.

Q. That involves a judgement?

A. Yeah.

Q. That was a judgement that was going to be a judgement of yourself, Fintan Towey and Michael Andersen?

A. Mm-hmm.

Q. You didn't you both of you decided you wouldn't go the route of a conference call?

A. I am not so sure that a conference call is a satisfactory way of doing business as important as that.

Q. You certainly, as far as I know, judging from evidence given by other people, you didn't go the route of discussing this fax with the whole Project Team?

A. If that's the evidence you have, that's the evidence you have. I don't know one way or the other whether I discussed it with all of them or any of them; I just

don't know.

Q. What it inevitably meant was that you were now coming on to a very critical point in the whole process;

isn't that right?

A. Yeah.

Q. And at the very least, the initial wrapping-up of that critical point was going to be done by a few people?

A. Mm-hmm.

Q. You went to Copenhagen, and you had, I think, two day meetings. I think some of the work involved sub-group work, didn't it?

A. I think so, yeah.

Q. Because there was still some sub-group work to be done on financial, marketing, I think one other management aspects?

A. I have forgotten the details. I thought that the financial

Q. I think that there was still

A. I thought financial to a large extent was finished. I thought that in terms of the pure marketing, that Maev had done that bilaterally with Andersens. I think we probably had to do the marking on performance guarantees and one or two other bits. But I don't have a detailed recall of exactly which marking we did.

Q. I want to refer to the first version of the evaluation report. You'll find it in either Book 46 but to

make it easy, you may also find it in the book you have just had open in front of you if you go to Leaf 117 of Book 43, the book you had open a moment ago. Leaf 117 of Book 42, isn't it? Is that the book I referred you to a moment ago?

A. Whatever book it is, I have it here, Leaf 117.

Q. Now, you say that when you went to Copenhagen, a lot of the work you had to do well, whether you had to do it or not, a lot of the work simply involved pulling information together; isn't that right?

A. I think so, yeah.

Q. But over and above just pulling information together, you also had to, as I said earlier, and as I think you agreed with me, you also had to complete the evaluations or at least a first look at them; isn't that right?

A. Yeah, there was some evaluations still to be complete.

Q. But the overall evaluation then was something you were going to pull together?

A. Yeah.

Q. Do you remember the evaluation model that we looked at this morning, in which Michael Andersen described the various steps that would be taken in arriving at the evaluation?

A. Yeah.

Q. That you would take each of the aspects, you would look at the dimensions in each of the aspects, you

would subtotal the dimensions in those aspects, you then take all those subtotals and you'd arrive at a grand total?

A. Mm-hmm.

Q. And if you look at page 43 of that October 3rd version, you see the heading "Summary, Concluding Remarks and Recommendation" and there is a list of five items. And the first item is: "The results on the basis of the evaluation of the marketing, technical, management and financial aspects (qualitative award of marks)."

"The results on the basis of the business case sensitivities. Risks and credibility (qualitative assessment.)

"The results on the basis of a regrouping of the criteria (qualitative award of marks)

"The results on the basis of the application of a quantitative scoring model (conversion of marks to points)."

Now, you have already given a lot of evidence about what you did when you were in Copenhagen and how you arrived ultimately at what you believed to be a way of presenting a result and how you arrived at what you believed to be the only way of achieving a result. A number of other witnesses have given evidence about their responses to this, but Fintan Towey has given evidence about what he understands what happened in

Copenhagen and how you arrived at the ultimate result as you saw it.

The first thing I want to ask you about is, I just want you to turn for a moment to Table 18. It's not the first table, but I just want to draw your attention to one point.

Do you see the first dimension there?

A. Mm-hmm.

Q. "Market development". The next one, "key financial figures", the next one, "experience of the applicant".

They are all part of the first criterion, all right?

A. Yeah.

Q. Then the next two are part of the second criterion, the technical one.

The split on the votes, or the split, rather, on the weights for those two criteria are set down there as 10, 10, 10 in the case of the first criterion and an equal split of 10, 10 in the case of the second criterion?

A. Mm-hmm.

Q. And I think that when I asked you about that at a very early stage in this process, when certainly I didn't have as much information about it as I have now, and maybe you didn't either, I think you indicated to me that you couldn't get into the detail on it; I wanted to know where did the split of 10, 10, 10, where did the weighting of 10, 10, 10 for the first criterion

and 10, 10 for the second criterion come from, and I think your response was I am almost summarising it was you'd need to do a bit of research or you'd need to look into it before you'd be sure to answer that, because I think I pointed out to you that and this has been pointed out by a number of other witnesses, that there seems to be no record anywhere of either of the following two things: 1) a formal when I say formal, I don't mean there seems to be no record, what I mean is there seems to be no record of a Project Group meeting at which anybody said "Look, we better agree a set of weights for the qualitative".

A. Mm-hmm.

Q. And there seems to have been no Project Group meeting at which anyone appears to have sat down and said, "We better agree a set of splits for the indicators on the qualitative". Or a set of splits for the dimensions, if you like, of the qualitative.

Now, to deal with those two issues, now firstly the first one to which to some extent you have already given me part of an answer, what recollection do you have of an agreement on the application of the quantitative the weights agreed in the quantitative to be applied to the qualitative?

A. I have a certainty that the global weights in terms of paragraph 19 were to be applied to the entire process.



That's the first point. I am very clear on that and always have been. After that, and I mean, I have read in recent days a lot of the to-ing and fro-ing about this issue with different witnesses, and it hasn't improved my recollection. I don't know what caused us to settle on 10, 10, 10 for first criterion on the day in Copenhagen; I just don't know. I have heard in recent days that Aidan Ryan may have thrown some light on it in private; I don't know what light that is because I haven't discussed it with him, but I don't have a clear recollection of it. I don't have a recollection of whether we did it or whether Andersens suggested it. I just don't know.

Q. Okay, well, let's just take it slowly, bit by bit. What you are saying to me this morning is that the headline weights, 30, 20 and so on, were, as far as you were concerned, to apply to both the qualitative and the quantitative?

A. They were written in stone for the entire process, in my view.

Q. Right. I am not suggesting that's not sensible, by the way. It seems to be the only sensible way to do it.

Mr. Andersen, however, doesn't seem to have seen it that way. If you look at the first line of the text accompanying the table I have just referred you to, you see where he says "Also a weighting mechanism was

agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18." Do you see that?

Now, he doesn't refer there to also a weighting mechanism was agreed for the quantitative and qualitative, or was agreed for the qualitative, or was agreed for the quantitative and we decided to apply it to the qualitative; do you follow me?

A. I do, yeah.

Q. What I am trying to inquire into is, how was it that Mr. Andersen made that very precise distinction and nobody said to him that's not correct? How come you didn't say to him "I am as certain as I can be of anything that we always agreed the weighting for the quantitative criteria would be the same weighting for the qualitative"?

A. That surely goes to the heart of the discussion which I have related here previously in Copenhagen about how to get to a result that respected the descending order of priority. I argued and Fintan Towey argued in Copenhagen that we couldn't have a result that clearly respected the descending order of priority and the agreed weightings based on letters. We have been down this road before at least once, maybe several times. So we must then have had a discussion about, you know, was that a valid thing to do or not? So if Michael Andersen was in any doubt, we contested it, clearly.

Q. I can well understand that you might have said, "Look, we are going to adopt these weightings", or "As far as we are concerned, we did adopt them, and everybody, when we go back to Dublin, we'll put this to everybody and we'll clarify it".

I can understand the problem that you had, but I am just surprised that there was no record of anyone formally agreeing to adopt them.

A. It must have been that there was some element of cross-purposes following the entire discussion, then, because I have no doubt that I and my colleagues were always clear that the weightings we settled were the weightings for the selection process and that they were not limited to the quantitative evaluation. I was never in any doubt about that; wasn't then and I am not now.

Q. Well, we know that this report was discussed, and we know that the report of the 18th was discussed.

A. Mm-hmm.

Q. And a number of changes were made from place to place to reflect different views of different members of the Project Group, but also to reflect views the Project Group members had about what had happened or what had not happened at any particular time. And isn't it surprising that nobody said "This is not correct.

Prior to the closing date we agreed a set of weights for the quantitative and the qualitative"? And in

fact, wasn't that something that the Minister, and I think maybe even the civil servants trumpeted, all these weights were agreed not just in advance of the evaluation but in advance of the closing date?

A. Which, as far as we were concerned, they were so agreed.

Q. Isn't it surprising that wouldn't have been stated, seeing as it's at such a significant point, and it wasn't stated in this version, the next version or the final version?

A. I suppose, looking at it as forensically, as you are now doing, it's reasonable for to you form that conclusion; but I am not saying that we looked at it as forensically then.

Q. I am not looking at it in that sense. I am simply reading it I read it here, and it says "A weighting mechanism was agreed for quantitative purposes". That seems perfectly plain. I have a document that says that, that you agreed a weighting for quantitative purposes; fine. But only for quantitative purposes.

Mr. Andersen seems to be fairly particular about some of these things. I am drawing your attention to the fact that notwithstanding that a lot of changes were made to the wording around these tables, no change was made to that, and it seems surprising.

A. I must be communicating badly today. I am still trying to get across the message that in my mind, it

would have been impossible to get a result from this competition respecting the descending order of priority without weightings.

Now, it may well be that Andersen Management International were of a different mindset. It may well be that they were focused on their own original model, which may have been designed without weightings. I said here before and I am saying now again, I can't compensate for the fact that he won't come and answer. All I can tell you is what I thought at the time, what I was thinking at the time.

Q. What you're saying to me is that when you were in Copenhagen, you either there and then, or at some other time, but certainly articulated there and then what you hit upon as a real problem with this methodology of evaluation?

A. The problem was that I was always of the view that we had agreed a set of weightings which were driving the competition. It became obvious at that point that AMI were reluctant to carry out that step, and I couldn't see how I could get to a conclusion of the competition that respected the basis of the competition without so doing.

Q. Well, can I just digress for one moment on to a slightly disturbing aspect of it, and it's this: This conversion to marks, as it's called by Mr. Andersen, was done in Copenhagen and reflected in this report of

the 3rd?

A. Mm-hmm.

Q. Now, if I could ask you to go back to the weightings book for a moment, and if you could go to Leaf 9 of the weightings book. Have you got a fax from Maev Nic Lochlainn to Michael Andersen?

A. Yeah.

Q. Now, this fax wasn't drawn to your attention before, I think. You may have seen the document, but we didn't discuss it and we didn't discuss the information contained in it.

It says "Dear Michael, two items for your attention.

"1. Please see qualitative scoring for technical aspect as recorded by John McQuaid by follows (Annex A). This does not correspond with the technical aspect subtotal detail on page 44 of the draft evaluation report. I believe it is a typo, marketing aspect scores having been duplicated by mistake.

"2. Please see attached list of criteria and weighting as agreed by the Project Group prior to the 4th August 1995 (Annex B).

"Could you please clarify how these relate to the weights as detailed on page 17/21 of the document of the 8th June 1995 which were to be the weights underlying the quantitative evaluation? (Page 17 is also attached at Annex C) and to page 7 of the draft

quantitative report (see section on weights at annex D)e.g. OECD basket is weighted 15.96. Does this correspond to 18% for competitive tariffing as agreed by the group."

Now, the first point that Maev Nic Lochlainn raises there does in fact simply reflect a typo; one line, one substantively correct line of the report was repeated in the next line. So I think we can ignore that. It's document Annex A.

Then you were asked to look at the attached list of criteria and weighting as agreed by the Project Group, Annex B. And that has a list of the criteria; do you see them?

A. Yeah.

Q. 20, 30, 18 and so on?

A. Yeah.

Q. Now, yours probably contains, or if it doesn't, it should contain, in faint writing to the right of 30, 32.5; do you see that?

A. I do, yeah.

Q. I think, in fairness to Ms. Nic Lochlainn, she has informed the Tribunal that that 32.5 was put on her note at a later point altogether by Ms. O'Keeffe, I think. So I don't think it was on it when she sent the fax.

A. Okay.

Q. She has a note "Weighting agreed to the group prior to

the 4th August."

She then says "Could you clarify how these relate to the weights as detailed on page 17 of 21 of the" what we now know to be the evaluation model that was adopted on the 8th June "which were to be the weights underlying the quantitative evaluation."

Now, something I hadn't, I think, realised when I was reading this out to Ms. Nic Lochlainn, I note that she says "the weights underlying the quantitative evaluation". And I hadn't realised that when I was talking to you about it earlier, and I think it does support what I believe to be a reasonable interpretation, that somebody must have known that if you totted those up, you'd get the quantitative weights in total, and that people were only concentrating on the splits and not on the tots, if you like.

A. Yeah.

Q. Well, you see them, she shows them on the next annex.

She says "How do the 30, 20, 18 tally with page 17 of 21, and how do they tally or how do they relate to page 7 of the draft quantitative report of the 20th September" that's the next document; do you see that?

A. Mm-hmm.

Q. Now, that there is no response to that facsimile cover the message on that facsimile cover



sheet sorry, there is no written response, no

documented response that we can see.

A. Okay.

Q. If you look at the notes of the meeting of the Project

Group of the 9th October, you will, however, see what

I think is a reference to it in the book you had open

a moment ago; it's at Leaf 121. I think Ms. O'Keeffe

has actually corrected one or two things on this, but

I don't think the corrections affect the part of the

document that I want to draw to your attention.

If you look at the second page, the note at the end of

the second page, do you see that

"Page 44 correct okay evaluation model appendix

quantitative analysis arrow up, report based on

qualitative analysis. Concluding remarks (page 44).

Are tables 16, 17 and 18 of equal importance."

The reference to page 44 and to John McQuaid's point

seems to be a reference to something that he raised

with Ms. Nic Lochlainn; do you see that?

A. Yeah, okay.

Q. So I wonder, was this matter responded to or discussed

at the meeting of the 9th?

A. Is page 44 not just

Q. That's not of relevance, I think. I am simply saying

that because John McQuaid referred to a mistake as

being on page 44, that seems to tally with what's in

the fax from Maev Nic Lochlainn. I am wondering, was

the fax discussed one of the suggestions I have is that it may have been discussed at that meeting.

What I want to ask you firstly is, there is one or two other indications as well, certainly one other indication that may have been discussed. Do you remember a discussion on it?

A. Not particularly, no.

Q. It does show, aren't I right in saying, that as of that date, Ms. Nic Lochlainn certainly was conscious of the different splits, or of the well, maybe she wasn't conscious of the different splits, but was conscious of the difference between the weights on page 17 of 21 and the weights shown in the quantitative evaluation of the 20th September, 1995, and she wanted an explanation: How can the quantitative evaluation differ from what we agreed?

Do you remember that issue arising?

A. I don't, particularly, no.

Q. Now, after that meeting, Mr. Andersen went about producing the second version of the evaluation report?

A. Yeah.

Q. And as in the first version of the evaluation report, the appendices contained a number of documents, or contained an amount of material including the evaluation model as adopted by the group?

A. Yeah.

Q. In the first version of the evaluation report, the

version of the 3rd October, the evaluation model was reproduced as per the document that I read out to you this morning?

A. Mm-hmm.

Q. In the second version of the evaluation report of the 18th October, the evaluation model was not replicated in the form it was originally adopted. I don't know if you are aware of this.

A. No, I am hearing that now for the first time.

Q. And in fact, the weightings, or the split on the weightings was changed.

A. I am hearing that for the first time as well.

Q. And the split that's contained at page 17 of 21 that Ms. Nic Lochlainn refers to, and that we referred to this morning and earlier this afternoon, was altered, and a split was put in which reflected what was contained on page on Table 18 of the report of the 3rd October.

A. Okay, that's news to me.

Q. And Table 17.

Now, I think other people have had an opportunity of commenting on that, including Fintan Towey. Firstly, what you had was a historical document being altered. You were perfectly entitled, if you wanted, to change from the evaluation model, presumably. But what was here being done was the alteration of the record of what you had agreed on the 9th June and its

replacement with something which tallied with what had been done in Copenhagen?

A. I have no recollection of being aware of that, and I think it's something I would have been aware of, and it's something that I would have done something about if I was aware of it at the time.

Q. I can understand why the fact that the table of the the table on page 17 of 21, which added to 103, might have had to have a qualification put into the report to explain how this error occurred. It's hardly a federal case, I suppose; this error occurred, it could be sorted out. But the changes that were made give the impression that what was agreed in June was the same as what was applied in Copenhagen; can you see that?

A. I can see the links you are making without having the documents in front of me.

Q. All right. And that's a disturbing linkage, isn't it?

A. Yes.

Q. What I want to try to do now that's why I want to focus on how was the split that is reflected in Table 18 arrived at and 17 and who arrived at it, or who proposed it? Now, I know you want to put that in a context of a much bigger discussion of how you arrived at your ultimate conclusions; I am happy to do that. I simply want you to understand there is this issue in my mind as well that I want to explore. I am

happy to go back now to Copenhagen and to what you were discussing in Copenhagen, and can I lay out a number of things that I think I want you to bear in mind.

As I mentioned to you earlier, the evaluation model suggested that a result would be arrived at on what was then called Table 15. Are you familiar with the table numbers?

A. I am not, no.

Q. We'll call it the aspects table.

A. Yeah, okay.

Q. The evaluation model never envisaged that you'd have the next table, which was Table 17 sorry, if I called it 15, I am wrong; I think it was 16. I beg your pardon. I'll just be absolutely sure about that now.

Table 16 is the aspects table. The next table was described as the results based on a regrouping of the criteria and the final table, Table 18, is the results based on a conversion of marks to points.

And in the course of the evidence given by Mr. Fintan Towey, the Tribunal was trying to find out how all of these tables came into existence and the sequence in which they came into existence; do you follow me?

A. Yeah.

Q. Now, to go back to my first question again, then, which is the split of 10, 10, 10. Mr. Towey thinks

that split was arrived at in Copenhagen.

A. Yeah, okay.

Q. Have you any comment on that?

A. I have no particular comment. My recollection of what went on in Copenhagen and my recollection of hearing what other people described of other parts of the marking was that, as a general proposition, the approach to marking this, that or the other aspect of the competition was proposed by the AMI people, and the departmental people present had a kind of, for want of a better word, devil's advocate approach: Why did you do it like that? Could you have done it like the other, and so on. That's the way the iteration took place.

Now, whether a split like that was proposed by AMI or by any of us, I don't have a recollection.

Q. But why would AMI propose it when they already had an evaluation model with a different split for the quantitative? If they were going to propose it, they were going to propose it as a separate split for the qualitative?

A. The only thing I can say about it is: We did not go to Copenhagen with a split in our minds. Whatever happened in Copenhagen, happened in Copenhagen. But I can't give you a better answer. I don't have a terribly detailed recall of it.

Q. Okay. You don't even have the recall that Fintan

Towey has, that that split was arrived at in

Copenhagen and it was decided by you and he?

A. Well, it must have been decided by the people around the table, which was me, Fintan and the Andersen people.

Q. The reason I am saying that, it would be strange that the Andersen people would agree it without there being a record of it, because they seem to be to be so conscious of deviations from records, that you would have expected some recording by them?

A. But this is again, we don't have their records any more.

Q. We don't.

A. And there is only you know, there is a limit to what you have seen this, I am sure, with other witnesses; there is a limit to what anybody recalls, and we all recall different bits with different degrees of clarity.

Q. What I now want to try and deal with is the sequence in which you arrived at the results that are contained in Tables 16, 17 and 18. I think you were telling me the last day that you found it impossible to see any result initially.

A. I think what I told you was that AMI, and I think AMI in the person of Michael Andersen, seemed to be convinced that the result was obvious from the letters, and I couldn't see that.

Q. I want to be just clear about that, if you can help me at all. From what letters at that stage? Because as far as I can see, if Michael Andersen was putting a proposal to you, and I am sure you'll agree with me that based on what he had said in the evaluation model, at its highest, that proposal couldn't have gone beyond Table 16?

A. I am not sure whether it was

Q. Well, if you look at Table 16, you'll see that's the table that reflects what's contained in the evaluation model.

A. Table 16 is what you referred to before as the aspects table, isn't it?

Q. Yes.

A. Okay. Table 17 is regrouping of the criteria, and then Table 18 is conversion of marks to points.

Now, I think that Table 16 and 17 had to exist before we got on to converting marks to points and before we had the discussion about the need to do so.

Q. Well, let me take you I see. So you think that Michael Andersen, if you like, tabled or proposed Table 16 and Table 17?

A. I think he started with Table 16.

Q. Well, maybe just very briefly we'll just agree what it contains. It contains the dimensions in the marketing aspects subtotaled. I think somebody eventually put the subtotals at the bottom rather than the top of the



dimensions. It contains the dimensions for the technical aspects subtotaled, the dimensions for the you see the mistake there, by the way, on page

44? Do you see that?

A. Yeah.

Q. The dimensions for the financial aspects and for the management aspects.

A. Mm-hmm.

Q. And then a total at the bottom, so that if you look at the bottom line, the grand total for A1 is a B; do you see that? If you look at A1, do you see that?

A. Yeah.

Q. The grand total is a B. That is not an attempt to aggregate every single lettered score above it. It's just an aggregation of the subtotal for marketing B, the subtotal for technical C, the financial subtotal of A, and the management aspect subtotal of C; do you see that?

A. Yeah.

Q. So it's a B, a C, an A and a B sorry, a B, a C, an A and a C?

A. Mm-hmm.

Q. So to summarise, it's an A and a B and two Cs?

A. Yeah.

Q. And he gave that a grand total of a B, and so on, with the other applicants?

A. Yeah.

Q. He then goes on, if you look at the next table, 5.3, he says "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate conformance testing."

Now, I just say two things about that: Firstly, I am not quite sure what that means. Do you what that sentence means?

A. I think it's recognising that the previous table is based on what I have often referred to as the Andersen proprietary model, and we always, throughout this exercise, wanted to bring it back to be understandable in the context of paragraph 19 of the RFP.

Q. I appreciate that, that you wanted to get it back to the paragraph 19 list, if you like.

A. Yeah.

Q. Would it be reasonable, therefore, to suggest that that was something you had suggested; not something Andersen had proposed?

A. I don't know, because I think we I think we had had a discussion about Andersen's way of grouping things and paragraph 19 a number of times. So, I mean, I don't know whether this was something they tabled, pre-cooked, or whether it's something that developed during the meeting. But I suspect it was the former, but I am not sure.

Q. If Andersen proposed Table 17, therefore, it was he produced it, he said, "There you are", and I said "I don't understand that", or "It's not clear from that", and it's not clear from 16, just summarising what you said already.

A. Yeah, okay.

Q. Right.

Have you got Book 46, or can you be given Book 46.

A. I think it's here.

Q. You'll need to have these two books open at the same time.

What Mr. Andersen is saying in the 3rd October report is, to repeat, "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19 of the RFP, the evaluators have carried out a separate conformance testing". And then he shows this table. It seems to suggest that some kind of testing, that in some way it seems to me to suggest that technically it speaks for itself, as it were; but in any case, so he produces 16 and he produces 17.

Now, if you go to the 25th October version, and you go to page 48, do you see that sorry, I beg your pardon, it's Leaf 50?

A. Yeah.

Q. Leaf 50.

A. Page 48.

Q. Page 48, correct; have you got that?

A. Yes.

Q. And you see that, that's the same table again; it has the letters with the arrows up and down on it. Do you see that?

A. Yeah.

Q. Underneath it, it says there is no narrative at the beginning; the narrative is at the end. Right?

A. Mm-hmm, yeah.

Q. It says "The marks awarded under each dimension are outlined in Table 16. The result in the "Grand Total" line has been achieved through a process of discussion to reach an agreed result taking account of the weighting of the evaluation criteria determined prior to the closing date." Do you see that?

A. Yes.

Q. Now, that seems to suggest something else altogether, doesn't it?

A. Something else

Q. It suggests that a discussion took place amongst the evaluators to arrive at what is contained in Table 16.

A. Certainly a discussion took place amongst the evaluators in relation to the contents of Table 17, but part of my input into that discussion, I couldn't see how the conclusions of grand total and ranking could be arrived at based on the information contained in the table.

Q. What I am concerned about is the different narrative which accompanies it in each case. Firstly I think your impression was that that table and the table the aspects table were proposed, if you like, or tabled by Mr. Andersen, or by the Andersen people. And that is consistent, as I see it, to some degree at least, with what is stated in the October 3rd version of the report.

A. Mm-hmm.

Q. But when you get to the final version of the report, the narrative that accompanies that is completely different, and it says "The marks were awarded under each dimension and that it was a process of discussion that resulted in this. The result in the 'Grand Total' line has been achieved through a process of discussion."

Now, there was certainly aren't I right in that, and I think no witness has denied this there was no discussion amongst the entire Project Team that led to that?

A. No, I mean, these tables were the product of the Copenhagen meeting; there is no doubt about that, no.

Q. But there was no discussion of the evaluators that led to that?

A. There was no discussion of the evaluators until the next meeting of the Project Group, where it was all explained to them.

Q. Yes, but they never had a discussion to arrive at that "Grand Total" line?

A. As of

Q. At any point. That table existed prior to this document ever being shown to anyone outside of the small grouping of yourself, Mr. Towey and Andersen.

A. Yes.

Q. So inasmuch as it existed prior to being brought to the attention of the Project Group as a whole, it cannot have been the result of a discussion by the Project Group as a whole?

A. That's correct.

Q. And that would be consistent with the legend or the narrative that accompanies it in the first version of the report?

A. Yeah, the only place that I am slightly at odds with you is that by the time the final version of the report came into being, what degree of discussion was there in the Project Group about the work done in Copenhagen? And you have more evidence on that than I have.

Q. Yes. There is, to my mind, I don't believe there is any evidence that the whole Project Team sat around you'd be there a long while, I would suggest, to arrive at what's contained in the bottom line of Table 16. Let's just look at it for a moment to see how the process would be done.

Firstly, might I remind you that when I drew your attention this morning to the tender document where Mr. Andersen warned against the difficulties of trying to multiply weights by grades, if you like, what you have here is a set of grades; all those grades are of course exactly the same as the ones that are in the aspects table. Isn't that right?

A. Yeah.

Q. They are all laid out again in a new form which tallies with paragraph 19.

A. Mm-hmm.

Q. Mr. Andersen re-orders paragraph 19 to make it tally with the dimensions. It's not strictly speaking paragraph 19; it's paragraph 19 expressed in terms of the dimensions. Isn't that right?

A. Yeah.

Q. Then he applies a weighting to each of the dimensions. And then he has he has a matrix then, or a table, in which he applies that weighting to each one of a total of 66 scores. And then you add up all of those scores, applying the weighting to them, and you arrive at a lettered score at the bottom. Now, that seems to me to be a task that would take a very, very long time.

A. What I am saying, and I believe I have said it consistently from very early on in this process, is that I couldn't see how you could get from the As, Bs,

Cs, and Ds and the weightings to the grand total and the ranking that's there, and that's part of what we discussed at length in Copenhagen.

Q. I am ad idem with you on that. I can't see how you can apply a weighting.

A. That's why I am saying this table had to have been generated by AMI, because I couldn't see the logic in that part of it.

Q. It seems to be consistent with what you are saying, that AMI generated that table, but subsequently a legend was put in suggesting it was generated by discussion amongst the evaluators. It's a bit misleading, isn't it?

A. We are getting into sort of Jesuitical judgements, I think, in the sense that you know, you have more evidence and you have evidence in private that I don't have access to

Q. Everything I am telling you is in fact I never realised this when you were in the witness-box. It's as a result of the process that we have realised that this document, which I think you did say in fact when we discussed it first we may not have been focusing on the distinction between Table 16 we'll give them names: this table and the aspects table.

It's only in the course of the discussions that it became clear to the Tribunal that this table had a different legend attached to it.



A. Yeah.

Q. What you're saying to me seems to be at least one, and as I see it, a reasonable interpretation, that you, with your distaste for the way it was being presented to you initially, would have been as unenthusiastic about this table as you would have been about the aspects table.

A. And what I am going on to elaborate from that is after we came back from Copenhagen, we explained to our colleagues in the Project Group what we had done in Copenhagen, and we answered their questions, and I believe we achieved we satisfied their requirements. And the question then is: Does that give a basis for changing the words under the table? And I don't know whether it does or not, but it seems to be what happened.

Q. Well, this is the last thing I am going to deal with today, and I am going to I don't think that can be an explanation, Mr. Brennan, and let me explain why I think that: If you came back from Copenhagen, and you explained to your colleagues that "I was presented with the aspects table, I was presented with this table; these tables didn't make any sense to me, or at least I didn't think that they showed a clear result, and I suggest that we convert that table to numbers and we apply the weights". If that was the explanation you gave to them and they ran with that

explanation, that's fine. But that doesn't, in any way, accord with the suggestion that that table was generated as a result of discussions amongst the evaluators. Do you follow me?

A. I do, yeah.

Q. What I think I'll do is I am going to draw to your attention the differences between the different versions. I am not going to put you on the spot and ask you now. You might think about them overnight; okay?

A. Right.

Q. That's firstly one distinction. Right? But I'll just take them more systematically now.

If we go back to the document you had a moment ago, Book 42, Document 117. That document contained as the headline document with the result of the process in the aspects table; right?

A. Mm-hmm.

Q. Now, when you went on to the final version of the report, that document was, if you like, relegated, I think is the word I have used, to, or demoted to the previous chapter. It no longer forms the final conclusions.

The next table: The results based on a regrouping of the criteria in accordance with what Mr. Andersen calls his investigations to see whether the conclusions of the evaluators were consolidated on the

basis of paragraph 19 of the RFP document. That table became the primary table. I am not going to ask you to turn to the page. You can think about it overnight?

A. Okay.

Q. Became the primary table and was described with a heading "Final Scoring According to Evaluation Criteria".

A. Mm-hmm.

Q. The next table on the 3rd October version is described as the results based on a conversion of marks to points. The narrative accompanying that says: "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18. If the marks (A, B, C, D and E) are converted to arabic points (5, 4, 3, 2 and 1), it could be calculated which applicants come out with the highest score measured by points, although such a calculation distorts the idea of a qualitative evaluation."

Now, that qualification, if you like, is not included in the final version. When Mr. Towey was giving evidence in relation to this, he was of the impression he thought that it was the table with the B-up and the B-down arrows. I think it's better if we give them some sort of description, because they have different numbers in different versions he wasn't

quite sure about it, and I am not holding you or him to it, that that was the table where you arrived at the result at one point; at another point he wasn't sure of the sequence, and he thought that in fact nothing was achieved in Copenhagen in terms of any tentative conclusion at all until your exercise, I think he wants you to share some of the credit for it, an exercise that he certainly approved of, if not to some extent, suggested a conversion of marks to points was carried out. So that that exercise may have been carried out and then the results read back into the other two tables.

A. No. I think it was because the table with the Bs up and Bs down wasn't showing me a result with the same clarity as it appeared to be showing to Michael Andersen, that I set about trying to find a way

Q. I think that's a reasonable view, because I can't see I can't see, firstly, what discussion took place, and I can't see why you would have been enthusiastic about that table in light of what you said earlier.

A. Mm-hmm.

Q. But I'd like to you reflect on it overnight, because we have made a little more progress than I thought we made, and if we could tackle some of those things in the morning before we finish up on the weightings. If that's all right with you. Thank you.

CHAIRMAN: All right. In those circumstances, we'll

resume at eleven in the morning.

Thank you, Mr. Brennan.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

THURSDAY, 26TH JUNE, 2003 AT 11AM.